

**ENVIRONMENTAL PROTECTION AGENCY**

**CFR Part 147**

[EPA-HQ-OW-2013-0280; FRL XXXX-XX]

**State of North Dakota Underground Injection Control (UIC) Program Revision to add Class VI Injection Wells to its Section 1422 UIC Program; Class VI Primacy Approval**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct Final Rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing its approval of the State of North Dakota's application for a program revision to add Class VI injection wells to its section 1422 underground injection control (UIC) program, under the Safe Drinking Water Act (SDWA).

**DATES:** This rule is effective on **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]** without further notice, unless the EPA receives adverse comment by **[INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. If the EPA receives adverse comment, we will publish a timely withdrawal in the *Federal Register* informing the public that the rule will not take effect. For judicial purposes, this final rule is promulgated as of **[INSERT DATE OF PUBLICATION**

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**IN THE *FEDERAL REGISTER*].** The incorporation by reference of certain publications listed in the rule is approved by the Director of the *Federal Register* (FR) as of **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].**

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OW-2013-0280, by one of the following methods:

- [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
- Email: [OW-Docket@epa.gov](mailto:OW-Docket@epa.gov).
- Mail: North Dakota; Underground Injection Control (UIC) Class VI Primacy, U.S. Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW, Washington, DC 20460.
- Hand Delivery: Water Docket, EPA Docket Center (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OW-2013-0280. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or

e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an “anonymous access” system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA’s public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Water Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC; and U.S. Environmental Protection Agency, Region 8, Library 2<sup>nd</sup> Floor, 1595 Wynkoop Street, Denver, Colorado 80202. The Water Docket Facility Public Reading Room in Washington, DC, is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Public Reading Room

telephone number is (202) 566-1744 and the telephone number of the Water Docket is (202) 566-2426. The Region 8 Library is open from 9:00 a.m. to 12:00 p.m. and 1:00 p.m. to 4:00 p.m., Monday through Thursday, excluding legal holidays. The telephone number for the library is (303) 312-1226.

**FOR FURTHER INFORMATION CONTACT:** Lisa McWhirter, Ground Water Protection Division, Office of Ground Water and Drinking Water (4606M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (202) 564-2317; fax number: (202) 564-3754; email address: [mcwhirter.lisa@epa.gov](mailto:mcwhirter.lisa@epa.gov) or Craig Boomgaard, Underground Injection Control Unit, U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, MSC 8P-W-UIC, Denver, Colorado 80202; telephone number (303) 312-6794; fax number: (303) 312-7084; email address: [Boomgaard.Craig@epa.gov](mailto:Boomgaard.Craig@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Why is the EPA Issuing a Direct Final Rule?**

The EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. However, in the “Proposed Rules” section of today’s *Federal Register*, we are publishing a separate document that will serve as the proposed rule approving an application from North Dakota under the SDWA to add Class VI

injection wells to its section 1422 UIC program. If adverse comments are received on this direct final rule, we will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If the EPA receives adverse comment, we will publish a timely withdrawal in the *Federal Register* informing the public that this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

## **II. Does This Action Apply to Me?**

### *A. Regulated Entities*

Category	Examples of Potentially Regulated Entities	North American Industry Classification System
State, Local, and Tribal Governments	State, local, and tribal governments that own and operate Class VI injection wells located within the State	924110
Industry	Private owners and operators of Class VI injection wells located within the State	221310
Municipalities	Municipal owners and operators of Class VI injection wells located within the State	924110

This table is not intended to be exhaustive, but rather provides a guide for readers regarding

entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

### **III. Introduction**

The State of North Dakota received primacy for Class I, III, IV and V injection wells under SDWA section 1422 on September 21, 1984 and Class II injection wells under SDWA section 1425 on May 11, 1984. The State of North Dakota has applied to the EPA under section 1422 of the SDWA, 42 U.S.C. Sections 300h-1, for primary enforcement responsibility for Class VI injection wells. This direct final rule is based on a legal and technical review of the State of North Dakota's application as directed in the Code of Federal Regulations (CFR) at 40 CFR Part 145. As a result of this review, EPA is issuing this direct final rule stating that the State of North Dakota's application meets all applicable requirements for approval under SDWA section 1422 and the State is capable of administering a Class VI UIC program in a manner consistent with the terms and purposes of the SDWA and all applicable regulations.

### **IV. Legal Authorities**

These regulations are being promulgated under authority of sections 1422 and 1450 of the SDWA, 42 U.S.C. 300h-1 and 300j-9.

## **Requirements for State UIC Programs**

Section 1421 of the SDWA requires the Administrator of the EPA to promulgate minimum requirements for effective State UIC programs to prevent underground injection activities that endanger underground sources of drinking water (“USDWs”). Section 1422 of the SDWA establishes requirements for States seeking the EPA approval of State UIC programs.

For States that seek approval for UIC programs under section 1422 of the SDWA, the EPA has promulgated a regulation setting forth the applicable procedures and substantive requirements. These regulations have been codified in 40 CFR Part 145. It includes requirements for State permitting programs (by reference to certain provisions of 40 CFR Parts 124 and 144), compliance evaluation programs, enforcement authority, and information sharing.

## **V. State of North Dakota’s Application**

### **A. Background**

On June 21, 2013, the State of North Dakota submitted a program revision application to add Class VI injection wells to its section 1422 UIC program. The EPA reviewed the application and published a *Federal Register* notice of North Dakota’s Underground Injection Control Program Revision Application on August 9, 2013 (78 FR 48639), which sought public comments and provided an opportunity to request a public hearing.

## B. Public Participation Activities Conducted by the State of North Dakota

The State of North Dakota held two public hearings with public comment periods on the State's intent to approve its Class VI UIC regulations. The first public hearing was held on April 24, 2012, and the public comment period closed on June 8, 2012. The second public hearing was held on October 22, 2012, and the public comment period closed on November 1, 2012. Both public hearings were held in Bismarck, North Dakota, and no public comments were received during the two public comment periods.

## C. Public Participation Activities Conducted by the EPA

On August 9, 2013, a notice of North Dakota's Underground Injection Control Program Revision was published in the *Federal Register* (78 FR 48639). This notice provided that a public hearing would be held if requested. No one requested a public hearing.

## VI. THE EPA's Direct Final Action

The EPA is approving the State of North Dakota's Class VI UIC program; North Dakota will assume primary enforcement authority for regulating Class VI injection wells in the State.

Support of this direct final rule is part of the public record in EPA's Docket No. **EPA-HQ-OW-2013-0280**. The State of North Dakota will administer and enforce its Class VI UIC program in the State. This direct final rule amends 40 CFR Part 147 and incorporates by reference the State-administered programs and the EPA-administered programs. The EPA will continue to



administer its UIC program for Class I, II, III, IV, V and VI injection wells on Indian lands.

The provisions of the State of North Dakota's Code that contain standards, requirements, and procedures applicable to owners or operators of Class VI UIC wells will be incorporated by reference into Part 147. Provisions for Class I, II, III, IV and V injection wells have already been incorporated by reference into Part 147. Any provisions incorporated by reference, as well as all permit conditions or permit denials issued pursuant to such provisions, will be enforceable by the EPA pursuant to section 1423 of the SDWA and 40 CFR §147.1(e).

The EPA will oversee the State of North Dakota's administration of the SDWA Class VI program. Part of the EPA's oversight responsibility will require quarterly reports of non-compliance and annual UIC performance reports pursuant to 40 CFR §144.8. The Memorandum of Agreement between the EPA and the State of North Dakota, signed by the Regional Administrator on [insert date of signature], provides the EPA with the opportunity to review and comment on all permits.

## **VII. Statutory and Executive Order Reviews**

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory review*

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011) and is

therefore not subject to review under Executive Orders 12866 and 13563.

*B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR §1320.3(b). The EPA has determined that there is no need for an Information Collection Request under the Paperwork Reduction Act because this direct final rule will not impose any new Federal reporting or record-keeping requirements. Reporting or record-keeping requirements will be based on the State of North Dakota UIC Regulations, and the State of North Dakota is not subject to the Paperwork Reduction Act. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (40 CFR sections 144-148) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040-0042. The OMB control numbers for the EPA's regulations in 40 CFR are listed in part 9.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's direct final rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR §121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's direct final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

*D. Unfunded Mandates Reform Act*

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1521-1538 for State, local or tribal governments or the private sector. The direct final rule imposes no enforceable duty on any State, local or tribal governments or the private sector. The EPA's approval of the State of North Dakota's program will not constitute a "Federal mandate" because there is no requirement that a State establish UIC regulatory programs and because the program is a State, rather than a Federal program. Thus, this direct final rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reason, the EPA has determined that this direct final rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's direct final rule is not subject to the requirements of section 203 of the UMRA.

*E. Executive Order 13132 - Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the State of North Dakota, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This direct final rule will simply provide that the State of North Dakota has primary enforcement responsibility under the SDWA for the Class VI UIC program, pursuant to which the State will be implementing and enforcing a State regulatory program that is at least as stringent as the existing Federal program, as explained in more detail in section VI of the Preamble. Authorizing the State of North Dakota as a Primacy State for the Class VI UIC Program in the areas covered by the State's program revision application to add Class VI injection wells to its section 1422 UIC program will not substantially alter the distribution of power and responsibilities among levels of government or significantly change the EPA's relationship with the State of North Dakota. Thus, Executive Order 13132 does not apply to this direct final rule.

*F. Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments*

This direct final rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 6, 2000). It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. Today's direct final rule contains no Federal mandates for Tribal governments and does not impose any

enforceable duties on Tribal governments. Thus, Executive Order 13175 does not apply to this direct final rule.

*G. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks*

The EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it approves the State of North Dakota’s primary enforcement authority (primacy) for the Class VI UIC program. This direct final rule will simply provide that the State has primary enforcement authority under the SDWA for its Class VI UIC program, pursuant to which the State will be implementing and enforcing a State Class VI UIC regulatory program that is at least as stringent as the existing Federal program.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This direct final rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”),

Public Law No. 104-113, 12(d) (15 U.S.C. section 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This direct final does not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human

health or environmental effects on minority or low-income populations because it does not affect or change the level of protection provided to human health or the environment. This proposed rule will simply provide that the State of North Dakota has the primary enforcement authority under the SDWA for the Class VI UIC program, pursuant to which the State of North Dakota will be implementing and enforcing a State regulatory program that is as stringent the existing Federal program.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). The EPA has made a good cause finding for the direct final rule. It is non-controversial; it simply provides that the State has primary enforcement responsibility under the SDWA for the Class VI UIC program, pursuant to which the State will be implementing and enforcing a State regulatory program that is at least as stringent as the existing Federal program. As stated previously, the EPA has made such a good cause finding, including the reasons therefore, and established an effective date of **[INSERT DATE 90 DAYS AFTER**

**PUBLICATION IN THE *FEDERAL REGISTER*].** The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).



**[State of North Dakota Section 1422 Underground Injection Control (UIC) Program**

**Revision; Class VI Primacy Approval; page 16 of 19]**

**List of Subjects in 40 CFR part 147**

Environmental protection, Incorporation by reference Indian-lands, Intergovernmental relations,  
Reporting and record- keeping requirements, Water supply.

Dated:

Gina McCarthy  
Administrator

For the reasons set out in the preamble, Part 147 of title 40 of the Code of Federal Regulations is  
to be amended as follows:

**Part 147 State, Tribal, and EPA-administered Underground Injection Control Programs**

1. The authority citation for Part 147 is amended to read as follows:

**Authority:** 42 U.S.C. §300h et seq.; and 42 U.S.C. 6901 *et seq.*

2. Subpart JJ is amended to read as follows:

§ 147.1751

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State-administered program—Class I, III, IV, V and VI wells.

The UIC program for Class I, III, IV, and V wells in the State of North Dakota, except those on Indian lands, is the program administered by the North Dakota Department of Health, approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the *Federal Register* on September 21, 1984; the effective date of this program is October 5, 1984. This program consists of the following elements, as submitted to EPA in the State's program application.

The UIC Program for Class VI wells in the State of North Dakota, except those on Indian lands, is the program administered by the North Dakota Industrial Commission, approved by the EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the *Federal Register* on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]; the effective date of this program is [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. This program consists of the following elements, as submitted by to the EPA in the State's program revision application.

**(a) Incorporation by reference.** The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of North Dakota. This incorporation by reference for Class I, III, IV and V wells was approved by the Director of the *Federal Register* effective October 5, 1984, and for Class VI wells was approved by the Director of the *Federal Register* effective [insert date].

**(1)** North Dakota Century Code Sections 38-12-01, 38-12-03 (1980);

**(2)** North Dakota Century Code, Sections 61-28-02 and 61-28-06 (1989);

- (3) North Dakota Administrative Code Sections 33-25-01-01 through 33-25-01-18 (North Dakota State Health Department Underground Control Program) (1983);
- (4) North Dakota Administrative Code, Chapter 43-02-02 (Subsurface Mineral Exploration and Development) (August 1986), and Chapter 43-02-02.1 (Underground Injection Control Program) (March 1, 1984);
- (5) North Dakota Administrative Code Sections 43-02-02-1-01 through 43-02-02-1-18 (North Dakota Geological Survey—Underground Injection Control Program) (1984);
- (6) North Dakota Century Code Sections 38-22-01 through 38-22-23 (Carbon Dioxide Underground Storage) (2013);
- (7) North Dakota Administrative Code Sections 43-05-01-01 through 43-05-20 (Geologic Sequestration of Carbon Dioxide) (2013).
- (b) Other laws.** The following statutes and regulations, although not incorporated by reference, also are part of the approved State-administered program;
- (1) North Dakota Environmental Law Enforcement Act of 1975, North Dakota Century Code Sections 32-40-01 to 32-40-11 (1976);
- (2) North Dakota Century Code, Ch. 38-12 (Regulation, Development, and Production of Subsurface Minerals) (1979);
- (3) North Dakota Century Code Chapter 61-28 (Control, Prevention and Abatement of Pollution of Surface Waters) (1989);
- (4) North Dakota Administrative Code Article 33-22 (Practice and Procedure) (1983).
- (c)** The Memorandum of Agreement between EPA Region VIII and the North Dakota

Department of Health, signed by the EPA Regional Administrator on May 18, 1984.

**(d)** The Program Description and any other materials submitted as part of the original application or as supplements thereto.

**(e)** The Memorandum of Agreement between EPA Region VIII and the North Dakota Industrial Commission, signed by the EPA Regional Administrator on **[insert date of signature]**.

**(f)** The Memorandum of Understanding between the North Dakota Industrial Commission, Department of Mineral Resources, Oil and Gas Division and the North Dakota Department of Health, Water Quality Division, Related to the Underground Injection Control Program signed on June 19, 2013.

**(g)** *Statement of Legal Authority*. “Class VI Underground Injection Control Program, Attorney General’s Statement,” signed by the Attorney General of North Dakota on January 22, 2013.

**(h)** The Program Description and any other materials submitted as part of the program revision or as supplements thereto.